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Jan F. Reimers
President

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APR 12 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 12, 1993

Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Subject: Comments In The Matter of Safeguards to Improve the Administration of the Interstate
Access Tariff and Revenue Distribution Processes, CC Docket No. 93-6, RM 7736

Enclosed you will find an original and 9 copies filed as directed in the above matter. This will
allow each Commissioner to receive a personal copy of these comments. Additionally, a
courtesy copy is being sent to William A. Kehoe III at the Accounting and Audits Division.

These comments are filed on behalf of several small member companies of the National
Exchange Carrier Association (NECA).

Sincerely,

A handwritten signature in cursive script, appearing to read "Jan F. Reimers".

cc: William A. Kehoe III, Accounting and Audits Division

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<u>Member Company</u>	<u>City</u>	<u>State</u>
Kadoka Telephone Company	Kadoka	South Dakota
Kaleva Telephone Company	Kaleva	Michigan
Kalida Telephone Company	Kalida	Ohio
Laurel Highlands Telephone Co.	Stahlstown	Pennsylvania
Lexington Telephone Company	Lexington	North Carolina
Ligoner Telephone Company	Ligoner	Indiana
Marianna & Scenery Hill Tel. Co.	Marianna	Pennsylvania
McClure Telephone Company	McClure	Ohio
Mid Century Telephone Coop., Inc.	Canton	Illinois
Middle Point Home Telephone Co.	Middle Point	Ohio
Mutual Telephone Company	Sioux City	Iowa
Odin Telephone Company	Odin	Illinois
Pennsylvania Telephone Company	Jersey Shore	Pennsylvania
Ronan Telephone Company	Ronan	Montana
Searsboro Telephone Company	Searsboro	Iowa
South Canaan Telephone Company	South Canaan	Pennsylvania
Spruce Knob Seneca Rocks Tel. Co.	Riverton	West Virginia
Sweetser Telephone Company	Sweetser	Indiana
The North-Eastern Pennsylvania Tel.	Forest City	Pennsylvania
Tipton Telephone Company, Inc.	Tipton	Indiana
Tri-County Telephone Memb. Corp.	Belhaven	North Carolina
Union Telephone Company	Hartford	South Dakota
Venus Telephone Company	Venus	Pennsylvania
Villisca Farmers Telephone Company	Villisca	Iowa
West Liberty Telephone Company	West Liberty	Iowa
Yeoman Telephone Company, Inc.	Yeoman	Indiana
Yukon Waltz Telephone Company	Yukon	Pennsylvania

The group, all Subset III carriers representing a broad cross section of the country, believes the NECA Board of Directors has done a conscientious job for the membership over the years and should continue to be given the latitude to function without being burdened by additional unnecessary rules. Creation of outside director positions has added another positive dimension to an already excellent board. Additionally, comments are also offered on other issues in response to requests contained in the Notice of Proposed Rulemaking that was released on February 11, 1993.

Background

NECA was mandated by the Commission to file access tariffs, manage the resulting revenue pools and administer federal universal service programs. Since its inception in 1984, the Association has withstood many challenges and changes in the regulatory landscape and access markets.

In 1986, 6 state commissions (Illinois, Massachusetts, Connecticut, Vermont, New Hampshire and Maine) petitioned to: (1) clarify the extent to which NECA should be permitted to participate in FCC proceedings; (2) “investigate the increasing budgeting expenditures of NECA and the accountability and control for its budget”; (3) initiate an inquiry into the “continuation of NECA,” its future role, and whether NECA should be “sunset”; and (4) initiate an inquiry into the staffing of NECA. A January 16, 1987 Memorandum Opinion and Order and Notice of Proposed Rulemaking responded to the petitions. The Commission affirmed its support of NECA, clarifying its appropriate participation in proceedings, proposing reapportionment of expenses to more accurately reflect activities and requiring additional data and information in tariff filings. Budget and staffing were deemed to be adequately controlled and were left to the Association to manage. Finally, the Commission affirmed that it never intended NECA to be only a transitional organization.

1989 brought Common Line depooling. This event substantially reduced the size of the pool in terms of both access lines and revenues. At the same time, it resulted in a new requirement to administer transitional and long term support flows.

In November 1990, the Commission required NECA to retain an independent auditor to perform two audits. The first, the Adjustments Audit, reviewed Subset I adjustments to the common line pool for 1988 and 1989. The second, the Safeguards Audit, recommended safeguards to prevent manipulation of NECA’s processes. The first audit has been concluded and settled and the second audit has led to this Notice of Proposed Rulemaking.

The Universal Service Fund (USF), which NECA administers as part of its mandate, has grown significantly during its 8 year phase-in period. This has resulted in concerns expressed by interexchange carriers supporting the fund. Additionally, NECA faces continuing pool erosion and rate

disparity problems and admittedly needs to improve the cost study review process.

The regulatory landscape managed by NECA started changing dramatically with depooling and is still changing. Alternative incentive regulation and streamlining proposals being considered by the Commission may have significant effects. Low to average cost member companies may be encouraged to exit the pool when these options are available. This will leave only the highest cost and average schedule companies as members. Alternatively, if companies were to exit the pool to maintain viability of cost status while others revert to the schedules, NECA could evolve into an association of average schedule companies, .

The changing regulatory and market landscape is precisely why the industry needs an organization like NECA. Members need assistance with tariff and pool administration functions , as well as with changes such as customer demands to reduce access charges, transport restructure, collocation and the impacts of emerging technologies.

NECA'S Board

Outside Directors

NECA's position as a nonprofit, quasi governmental, industry association subjects its highest level board organizing activities to FCC rules. Open proceedings, like this Notice, result in greater scrutiny than other public corporate boards experience.

NECA seized the initiative before the Safeguards Audit was concluded and petitioned to add outside directors to the board. This action was taken to enhance the effectiveness of the board by bringing new and independent perspectives to deliberations. Directors have always taken seriously their charge to assure NECA discharges obligations under Commission rules.

Adding Outside Directors

Since outside directors were not added to the board because of inadequacies or wrongdoing, the question should not be whether 2 can adequately assure that NECA discharges obligations under Commission rules. Rather, it should be, if more outside directors are added, what additional benefits may accrue?

Displacing existing directors to add one or more additional outside directors could have negative side effects. It could create unnecessary churn and negatively impact board effectiveness at a critical time in the Association's evolution.

Reducing the size of the board by any number of members would diminish valuable contributions made by astute business people currently serving. This would limit instead of enhancing perspectives represented on the board, offsetting any benefits to be gained by adding outside directors.

Board Composition

Changing the composition of the board as suggested in the Notice (3 Outside, 2 Subset I, 2 Subset II and 6 Subset III) will reduce representation in each Subset by one third. It will not change balance. However, Subset III, representing the vast majority of the pooling companies, will lose 3 members. Consequently, more existing board members representing the pooling companies would forfeit their seats than those representing non-poolers; and 5 directors would be replaced by

outside director positions. This is the correct posture.

During its initial outside director deliberations, the NECA board Election Committee:

- Developed eligibility criteria.
- Conducted a highly successful search for multiple qualified candidates without detailed FCC rules.
- Offered numerous qualified candidates vying for the 2 seats to member companies as urged by the Commission.

The process worked.

As indicated previously this proceeding subjects the NECA Board to greater scrutiny than almost any other corporate board. Creating rules to manage a process, which has already been successfully overseen by the

Creating rules covering term limitations and overlapping would eliminate another board prerogative and reduce the flexibility of the board to manage what should be its own internal processes. Unless interim special elections to fill unforeseen vacancies are allowed along with the term limitation rules, it might also result in 'lame duck' status for members forced to stay on while not actively participating. This could be damaging and should be avoided.

Term limitations are not currently necessary within subsets to achieve orderly succession. Therefore, this practice should be unnecessary for outside director positions. Similarly, formalizing overlapping 2 year terms seems unnecessary. Internal processes should be adequate to insure that an effective board remains in place on a continuing basis.

Voting Privileges on Committees

Current rules specify that for each access element or group of access elements for which voluntary pooling is permitted, there shall be a committee composed only of directors from companies participating, etc....This rule could easily be revised to add an outside director and a non-pooling voting member as suggested. It could just as easily be eliminated to allow the board the freedom and latitude to exercise normal prerogative in deciding this issue.

Directors representing the voluntary poolers do not exclude outside directors and non-pooling directors from their deliberations. Their input is welcomed, just as a voting membership on the committees would undoubtedly be viewed favorably. Either revision of the existing rule or elimination of this particular provision would be acceptable.

Prohibition of 'Ad Hoc' Committees

'Ad Hoc' subcommittees can serve a valuable purpose by addressing specific issues for the standing committee and recommending appropriate action without requiring all members to examine and analyze every detail. This promotes the most efficient use of the time that board members devote to NECA.

If bylaws governing these groups have been unclear it was probably an oversight. Revising the bylaws to clarify correct procedures can be accomplished by allowing the board to act without a Commission directive.

This opportunity should be extended to the board.

Conclusion Regarding NECA'S Board

The NECA board has done an excellent job of providing both oversight of the Association's activities and broad direction for the staff. Tentative conclusions in this Notice restricting board prerogatives and latitude to act through additional rules may neither be prudent nor in the public interest.

NECA RESPONSIBILITIES UNDER COMMISSION RULES

Overall Responsibility

The Notice states, 'In the course of its operations, NECA receives much data that LECs assemble in accordance with our accounting, separations and access rules.' It recognizes that each submission can not be reviewed by the Association staff in minute detail and then says if review leads to a conclusion of noncompliance, NECA should correct the data. Comments on evolution of procedures for correcting data are sought.

There are a myriad of issues that must be addressed before granting this type of enforcement authority to NECA.

NECA member companies normally have highly skilled, well trained, conscientious personnel in positions involving accounting, separations, and

only the data of companies that have been subjected to detailed reviews? If it is the former, procedures must insure authority is not arbitrarily applied. If the latter, procedures must be detailed to insure the selection process is valid and nondiscriminatory.

Another important question revolves around implementation on a retroactive versus prospective basis. If both options exist, how is consistent application assured?

Exercise of this type authority could lead to increased petitions before the Commission and/or litigation claiming confiscation of funds and liability. Therefore, great care must be taken in developing procedures, particularly documentation and escalation of potential disputes. Further, what will be the procedures for escalation? Will the board be involved?

Granting this authority to NECA could ultimately drive member companies to exit the pools, which leads to another pool neutrality issue.

Absent detailed proposals from NECA staff on how procedures might evolve and be utilized, it is difficult to provide precise comments. It may be appropriate to institute a separate Notice focused exclusively on this proposal. Additionally, the Commission might want to look into NECA staffing to insure there is adequate unbiased, resident expertise that thoroughly understands the small pooling company environment before granting this authority.

Resolving Controversial Issues

The Commission's rules are generally clear and concise. Most can be understood without difficulty. However, there are some rules that allow latitude for valid, reasonable interpretation. Interpretations can vary within limits and still be consistent with the intent of the rules. Ultimately clarification can be sought when required.

These valid interpretations can be accommodated in the rate of return, pooling environment as long as costs are input to the rate development process correctly and customer charges and settlements are consistent with this process. Therefore, reasonable, divergent LEC viewpoints can be accommodated without materially affecting customers or the pooling processes.

The Commission's continuing regulatory simplification efforts will undoubtedly yield greater clarity, eliminating many issues.

NECA's attempts to understand divergent, reasonable, valid interpretations should not be misconstrued as consensus building. It is an exercise of fiduciary responsibility to insure the pool is not disadvantaged. In essence, it is consultation with members aimed at reducing the number of divergent viewpoints.

Encouraging NECA to implement a single interpretation of a rule which currently affords opportunities for valid, reasonable, divergent interpretations may be a stimulus for member companies with other viewpoints to exit the pools. Again, this is inconsistent with pool neutrality.

The Commission is the proper source for clarification of unclear rules. Existing regulatory procedures accommodate petitions for clarification. NECA should not assume this key Commission role.

On-line Access to NECA Data Bases

On-line access to NECA data bases in a secure environment limited to the FCC would be acceptable. It should make the Commission's regulatory task easier. Even if security and confidentiality issues are addressed, however, there is still an issue of fairness.

For example, if the Commission focuses its attention on the Universal Service Fund (USF) data base which contains data for all LECs, companies share the same potential for exposure. However, if the focus is on pooling data bases, it will only include companies remaining in the pools.

Large companies already provide mechanized ARMIS data to the Commission. Non-pooling companies that are not required to provide ARMIS data could potentially be exempt from on-line scrutiny. Being exempt could be viewed as potentially reduced exposure and less of a regulatory burden. Coupling this incentive with the Commission's regulatory reform initiatives for small companies, more members may opt to exit the pools. Here is another inconsistency with pool neutrality.

Consistency of this proposal must be balanced with desires to reduce regulatory oversight and burdens. Creating a burden for local exchange carriers taking advantage of the regulatory reform initiatives is not the answer. Limiting the on-line data base access to USF would be an acceptable compromise, and access should be strictly limited to FCC staff.

Strengthening NECA's Internal Procedures

Monitoring Commission Developments

NECA's cost issues manual should identify acceptable, reasonable interpretations of rules when industry experts hold divergent viewpoints. Accepting multiple interpretations can be consistent with NECA's responsibilities in the context described earlier. However, when the Commission has clarified its intent, the Association should not mislead the membership by supporting or instigating petitions for reconsideration.

NECA was mandated and empowered by the Commission. As the liaison between the FCC and its members, the Association should be keenly aware of Commission positions on controversial rules and accountable for leading the constituency to comply. In order to fulfill this role, NECA needs open access to bureau staffs, which it has. Authority to correct data and power to act as the sole legitimate interpretive source on controversial rules should not be delegated to NECA.

NECA has always had an indication of the preparer and a responsible employee on monthly pooling inputs. In some cases, consulting firms prepare monthly pooling inputs. Modifying these procedures to require a sign off would be burdensome.

Implementing a procedure like this is neither consistent with

this type of incentive is probably inappropriate. But, incentive compensation might be appropriate to reward productivity gains or substantial reductions in the annual operating budget.

In reference to methods by which NECA might assess its effectiveness in securing LEC compliance with the rules, it must first be understood that this is a requirement of the job. Compliance with the rules is an imperative, not a result for which staff should receive incentive payments.

NECA effectiveness in securing LEC compliance with rules can only be assessed through cost study review findings which reverse errors that could have led to noncompliance. Since NECA has had difficulty focusing the cost study review process, the membership should be assured it is working as intended, before using it as a measure to gauge effectiveness

Cost Study Review Process

Over the years NECA has committed substantial financial and human resources to the cost study review process. Functions have evolved from a CABS and Access Review process to the Earnings Management Process. The Commission should be commended for taking an interest in this facet of the Association's work and should require an annual report as long as sampled LEC confidentiality can be maintained.

The annual report could be used by the Commission to assess NECA's effectiveness in securing compliance with the rules as described above. It can also be used to determine the cost/benefit ratio to justify the budgetary expenditure which would be responsive to the 1986 state commission petition.

Independent Audits for Non-pooling LECs

The Commission's belief that it cannot properly "outsource" to NECA the responsibility for reviewing LEC cost studies that do not affect NECA's revenue requirement or revenue distribution computations is cogent. LECs exiting the pool sever their ties with the Association.

Requiring a sample of rate of return LECs that file their own tariffs to retain independent auditors to report annually on the sufficiency of LEC cost studies would add to the expense of administering interstate access.

This expense would ultimately be borne by customers through inflated, less competitive, access rates. In particular, it would disadvantage small

- Eliminate potential for antitrust liability claims from competitors providing similar services.

INS should not assume that because NECA represents the pools on access matters that it automatically represents these same LECs on other issues. Following Commission approval of a proposed service or business arrangement, INS should be free to stimulate subscription to its offering by any LEC, but it should not represent itself as agent for any LEC, until the LEC delegates authority in a letter of intent or an agreement.

Respectfully submitted
ICORE, Inc.

A handwritten signature in black ink, appearing to read "K. F. Lemire", is written over a horizontal line. The signature is fluid and cursive.